

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Greg Finch	Team: Squad #9	CCRB Case #: 201905171	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 06/12/2019 8:32 PM	Location of Incident: § 87(2)(b)	Precinct: 40	18 Mo. SOL 12/12/2020	EO SOL 7/29/2021	
Date/Time CV Reported Thu, 06/13/2019 4:52 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 06/13/2019 4:52 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. LT Darrien King	00000	936870	040 PCT
2. POM Malachi Mckenith	02680	945983	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Diony Fernandez	29274	954803	040 PCT
2. POM Khalid Abdulla	24246	961590	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Darrien King	Abuse: Lieutenant Darrien King forcibly removed § 87(2)(b) to the hospital.	
B.LT Darrien King	Force: Lieutenant Darrien King used physical force against § 87(2)(b)	
C.POM Malachi Mckenith	Force: Police Officer Malachi Mckenith used a chokehold against § 87(2)(b)	
D.POM Malachi Mckenith	Force: Police Officer Malachi Mckenith restricted § 87(2)(b)'s breathing.	

Case Summary

§ 87(2)(b) called the CCRB and filed this complaint on June 13, 2019.

On June 12, 2019, at approximately 6:30 p.m., § 87(2)(b)'s wife, § 87(2)(b), called 911 to request medical attention for § 87(2)(b) at § 87(2)(b), in the Bronx. § 87(2)(b) and § 87(2)(b) responded to the apartment. However, § 87(2)(b) refused to cooperate with the EMTs, so they requested NYPD assistance. Later that evening, at approximately 8:32 p.m., Police Officer Khalid Abdulla, Police Officer Diony Fernandez, Lieutenant Darrien King and Police Officer Malachi McKenith, all of the 40th Precinct, responded to the scene. Lieutenant King forcibly removed § 87(2)(b) to § 87(2)(b) (**Allegation A: Abuse of Authority - Forcible Removal to Hospital - § 87(2)(g)**). Lieutenant King used force against § 87(2)(b) (**Allegations B: Force - Physical force - § 87(2)(g)**). PO McKenith used a chokehold against § 87(2)(b) which restricted his breathing (**Allegation C: Force - Chokehold - § 87(2)(g)**; **Allegation D: Force - Restricted Breathing - § 87(2)(g)**). No summons or arrest resulted from this incident.

Body Worn Camera video and cell phone video evidence was obtained for this incident (Board Review 01; Board Review 02). All references to video evidence in this report refer to the timestamp in the video player, rather than any on-screen clock embedded in the video itself.

Findings and Recommendations

Allegation A – Abuse of Authority: Lieutenant Darrien King forcibly removed § 87(2)(b) to the hospital.

It is undisputed that § 87(2)(b) called 911 to request medical attention for § 87(2)(b) due to his intoxication. It is also undisputed that EMS responded to § 87(2)(b)'s 911 call and then requested police assistance after § 87(2)(b) became uncooperative. It is also undisputed that EMT § 87(2)(b) informed Lieutenant King that § 87(2)(b) needed to be forcibly removed to the hospital, and that this was EMS' decision alone.

EMT § 87(2)(b) testified that she made the determination that § 87(2)(b) needed to be removed to the hospital to be medically evaluated due to his high blood pressure, that § 87(2)(b) alleged that § 87(2)(b) was intoxicated, and that it was unsafe for § 87(2)(b) to remain in the apartment with two children due to his erratic and aggressive behavior (Board Review 03).

Lieutenant King's BWC footage (VLC timestamp 14:45) depicts the discussion between Lieutenant King, § 87(2)(b) and EMT § 87(2)(b) where EMT § 87(2)(b) determines that § 87(2)(b) must be removed to the hospital to be medically evaluated (Board Review 01; Board Review 05).

Lieutenant King's testimony was consistent with EMT § 87(2)(b) testimony and his BWC footage as described above (Board Review 04).

Officers responding to an AIDED individual should assist and cooperate with EMTs in every reasonable manner. NYPD Patrol Guide, Section 216-01 (Board Review 07).

§ 87(2)(g)

Allegation B – Force: Lieutenant Darrien King used physical force against § 87(2)(b)

It is undisputed that Lieutenant King, PO McKenith, PO Abdulla and PO Fernandez used physical force against § 87(2)(b) to place him into custody after the officers decided to forcibly remove him to the hospital. It is also undisputed that at least twenty minutes passed between the officers' first discussion of needing to forcibly remove § 87(2)(b) to the hospital, and that § 87(2)(b) repeatedly verbally refused to go to the hospital, at least five times in total. It is also undisputed that during these twenty minutes, EMTs determined that § 87(2)(b)'s blood pressure was elevated, and § 87(2)(b) attempted to reenter his bedroom from the living room area.

PO Fernandez's BWC footage (VLC timestamp 25:23) (Board Review 08) partially depicts the physical force all four officers use against § 87(2)(b) in the apartment living room, culminating in a forcible takedown. At this point in the incident, officers had been in § 87(2)(b)'s apartment for approximately 50 minutes and EMS had determined that § 87(2)(b) needed to be removed to the hospital. After § 87(2)(b) refuses to go to the hospital and asks to return to his bedroom, Lieutenant King approaches § 87(2)(b) with outstretched arms and says, "We have to forcibly do it, I'm sorry sir, I apologize sir, we did everything alright." PO McKenith, PO Abdulla, and PO Fernandez assist Lieutenant King in handcuffing one of § 87(2)(b)'s arms and told § 87(2)(b) to "turn back." All four officers grab § 87(2)(b)'s arms and attempt to pull them behind his back in order to rear-cuff him. Officers repeatedly instruct § 87(2)(b) to place his arms behind his back and to stop resisting. § 87(2)(b) locks and stiffens his arms at his sides for thirty seconds. During the struggle, PO Abdulla handcuffs § 87(2)(b)'s right wrist.

§ 87(2)(b)'s statement was generally consistent with the BWC footage. § 87(2)(b) also testified that during this struggle, PO McKenith bent § 87(2)(b)'s right wrist towards his forearm, causing § 87(2)(b) to scream in pain, "You're breaking my wrist" (Board Review 09). The BWC footage does not show § 87(2)(b) saying, "You're breaking my wrist" during the physical struggle or forcible takedown. § 87(2)(b) alleged that his right wrist was bruised and swollen as a result of officers bending his wrist against his forearm. Two weeks after the incident, marks from the handcuffs were still visible on § 87(2)(b)'s right wrist. (Board Review 18) § 87(2)(b) had no other visible injury.

Lieutenant King's, PO McKenith's, PO Abdulla's and PO Fernandez's statements were all consistent with the BWC footage (Board Review 04; Board Review 11; Board Review 12; Board Review 13). PO Abdulla denied that he or any officer bent § 87(2)(b)'s wrist, but acknowledged that he adjusted § 87(2)(b)'s wrist "so the cuffs wouldn't hurt him." Based on the BWC video and PO Abdulla's statement, the investigation identified PO Abdulla as the officer who bent § 87(2)(b)'s right wrist during the struggle. Lieutenant King, PO McKenith, PO Abdulla and PO Fernandez generated TRIs for this incident (Board Review 14), which were generally consistent with their testimony and with the BWC footage.

Members of the service are allowed to use reasonable force to bring a subject into custody. NYPD Patrol Guide, Section 221-01 (Board Review 15).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Force: Police Officer Malachi McKenith used a chokehold against § 87(2)(b)

Allegation D – Force: Police Officer Malachi McKenith restricted § 87(2)(b)'s breathing.

§ 87(2)(b) testified that as officers were attempting to place him in handcuffs, PO McKenith locked his arm around his neck and pulled § 87(2)(b) forward and down to the ground. PO McKenith's chokehold caused § 87(2)(b) to feel compression of his windpipe, which restricted his breathing. § 87(2)(b) estimated that this chokehold lasted for approximately two to

three minutes. § 87(2)(b) alleged that his neck and shoulders were sore and swollen as a result of the chokehold.

Between BWC timestamp 21:19:43 and 21:20:13, PO Fernandez's BWC video (Board Review 23; Board Review 08) depicts PO McKenith reaching his left arm around the front of § 87(2)(b)'s neck, locking his arm, and pulling § 87(2)(b) forward and towards the ground, ultimately bringing them both down to the ground. A screenshot from this video shows PO McKenith reaching his left arm around the front of § 87(2)(b)'s neck (Board Review 24). In another screenshot from PO Fernandez's BWC video, PO McKenith is seen in the upper left corner with § 87(2)(b)'s head in the crook of his left arm, with his forearm pressed against § 87(2)(b)'s throat (Board Review 22). As the BWC video continues, § 87(2)(b) falls on his left side on top of PO McKenith's chest. § 87(2)(b) yells, "I'm not doing nothing" with the final word sounding suddenly strained. § 87(2)(b) repeatedly says, "I can't breathe" while on the ground in this position. PO Fernandez and Lieutenant King yell, "McKenith! McKenith! Come on, come on." § 87(2)(b) reiterates, "I can't breathe." PO McKenith releases his left arm's grip from § 87(2)(b) and says, "My arm is up!"

PO McKenith denied making contact with § 87(2)(b)'s neck or restricting his breathing, and as such, he did not provide a justification for doing so. After being presented with the above-mentioned BWC footage, PO McKenith still denied placing § 87(2)(b) in a chokehold or restricting his breathing. PO McKenith explained that he pulled § 87(2)(b) to the ground by his torso and did not make contact with § 87(2)(b)'s neck with this maneuver. PO McKenith also explained that, in training in the NYPD Academy, he learned, "Wherever the head goes, the body will follow," which informed the forcible takedown technique he used during this incident. PO McKenith explained that other officers yelled "McKenith" at him multiple times because they were concerned that his arm was pinned underneath § 87(2)(b). PO McKenith explained that his response—"My arm is up!"—was his way of telling the officers that his arm was not pinned underneath him.

Lieutenant King's, PO Abdulla's, and PO Fernandez's statements were generally consistent with PO McKenith's. However, after viewing the above-mentioned BWC footage, Lieutenant King testified that PO McKenith's arms were "proximate" to § 87(2)(b)'s neck.

Members of service shall not use a chokehold, which shall include, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air. NYPD Patrol Guide, Section 221-01 (Board Review 15).

§ 87(2)(g)

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Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 21).
 - Lieutenant King has been a member-of-service for 15 years and has been a subject in six CCRB complaints and 21 allegations, three of which were substantiated. § 87(2)(g)
- § 87(2)(g)
- In #201601496, the Board substantiated a frisk allegation and recommended Formalized Training. The NYPD imposed Formalized Training.
 - In #201700199, the Board substantiated frisk and search allegations and recommended Charges. The NYPD found Lieutenant King guilty and imposed a forfeiture of 4 vacation days.

- PO McKeith has been a member-of-service for 12 years and has been a subject in 18 CCRB complaints and 60 allegations, six of which were substantiated. § 87(2)(g)
- § 87(2)(g)
- In #201308493, the Board substantiated threat of arrest and offensive language allegations and recommended Instructions. The NYPD imposed Command Discipline B and Instructions.
 - In #201400407, the Board substantiated a physical force allegation and recommended Command Discipline B. The NYPD imposed Command Discipline B.
 - In #201706698, the Board substantiated retaliatory arrest, stop, threat of arrest and threat of force allegations and recommended Formalized Training. The NYPD imposed Formalized Training.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined mediation.
- As of May 13, 2020, the NYC Comptroller's Office has no record of a Notice of Claim being filed in regard to this complaint (Board Review 26).
- According to the Office of Court Administration (OCA), § 87(2)(b) has not been convicted of any crime in New York City (Board Review 20).

Squad No.: 9

Investigator: <u>Greg Finch</u>	<u>Investigator Greg Finch</u>	<u>10/19/2020</u>
Signature	Print Title & Name	Date

Squad Leader: Monique West IM Monique West 10/22/2020
Signature Print Title & Name Date

Reviewer: _____

Signature Print Title & Name Date